IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 25.01.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

S.A.No.351 of 1997

The Director (Personal)
Neyveli Lignite Corporation Ltd.,
Neyveli. .. Appellant/Defendant No.3

vs.

1.R.Senathipathi .. 1st respondent/Plaintiff

2.The State of Tamil Nadu,
rep by its District Collector,
Coimbatore.

3.The Director,
Directorate of Technical Education,
College Road, Madras-6. .. RR 2 & 3 / D1 & D2

Prayer: This second appeal has been preferred against the decree and judgment dated 28.10.1996, passed by the learned Subordinate Judge, Udumapet in A.S.No.12 of 1995, reversing the decree and judgment dated 19.9.1994, passed in O.S.No.482/1992 on the file of the Court of District Munsif, Pollachi.

For Appellant : Mr.N.Nithiyanandam

For Respondents : Mr.R.N.Amarnath for R1

Mr.P.Shanthi Rakkappan, Govt.Advocate (CS)
For R2 & R3

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JUDGMENT

The 3rd defendant in O.S.No.482/1992 on the file of the Court of District Munsif, Pollachi, who has succeeded in his defence, lost the same in the appeal preferred by the plaintiff in A.s.No.12/1995 on the file of the Court of Subordinate Judge, Udumalpet, is the appellant herein. The plaintiff has filed the suit in O.S.No.482/1992 for declaration that his date of birth is 20.8.1964 and also for consequential mandatory injunction

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directing the 3rd defendant/appellant herein to correct the date of birth of the plaintiff in his service register as 20.8.1964 in stead of 19.3.1963.

2. The averments in the plaint in brief relevant for the purpose of deciding this appeal are as follows:-

2(a) The plaintiff is the second son of his father Ramasamy Gounder and mother Rathinam. The plaintiff's elder brother was born on 16.11.1961 and the plaintiff's younger brother was born on 14.11.1967. The plaintiff studied in Nachimuthu Polytechnic during 1976-1982. Thereafter he pursued his studies in Institute of Technology at Coimbatore from1982 to 1986 and he became a graduate in engineering. Thereafter the plaintiff joined in the D3's Corporation as an Assistant Engineer on 7.4.1987. In all his school records, the plaintiff's date of birth has been wrongly mentioned as 19.3.1963. The plaintiff's father is an illiterate, hence he gave the date of birth of the plaintiff as 19.3.1963 instead of 20.8.1964. When the plaintiff's parents were making arrangements for the marriage of the plaintiff, through his horoscope the plaintiff came to know that his date of birth is 20.08.1964. When the plaintiff made a search in the Sub-Registrar's office Pollachi in respect of the registration of his birth he came to know that there was no entry for his birth in the year 1963, but his birth was entered in the register for 1964 as his date of birth is 20.8.1964. A certificate has been issued to that effect by the Sub-Registrar. So the plaintiff's date of birth is 20.8.1964 and not 19.3.1963. In the service register maintained in the D3's corporation also the plaintiff's date of birth has been wrongly entered as 19.3.1963 on the basis of his date of birth recorded in the school register. The plaintiff has issued notice under Section 80 of CPC. The said notice was received by D1, who had instructed the plaintiff to take necessary steps through the relevant department. D3 has received the notice but has not chosen to send any reply. Hence, the suit.

3. The second defendant has filed his written statement which was adopted by the first defendant, which runs as follows:-

The suit is not maintainable at all on law or on facts. The plaintiff has joined in Nachimuthu Polytechnic Higher school on 7.7.1996. while joining in the school his date of birth was given as 19.3.1963. Only on the basis of a declaration given in the school certificate his date of birth has been entered into other registers like serive register etc., as 19.3.1963. The diplomo certificate as well as transfer certificate has been issued to the plaintiff on 7.7.1982 itself. In both the certificates his date of birth has been mentioned as 19.3.1963. The contention of the plaintiff that only through his horoscope he came to know that his date of birth is 20.8.1964 cannot be sustainable. The plaintiff has left the school on 7.7.1982 itself. Hence, after a long lapse of time the plaintiff is not entitled to ask for any correction of his date of birth in the service register. The plaintiff can claim mandatory injunction subject to the rules and regulations followed by the Neyveli Lignite Corporation Ltd.. If the date of birth is corrected as

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20.8.1964, the plaintiff will be in service for another 1 ½ years. After the plaintiff came to know about the date of birth from horoscope he has not approached the Neyveli Lignite Coporation (D3) to change his date of birth. The plaintiff has to take necessary steps before the appropriate department for the change of date of birth. Without resorting to the said course, the suit filed by the plaintiff is not maintainable. As per the circular dated 20.8.1992, the plaintiff can take steps only through his employer to change his date of birth. But the plaintiff has not taken any steps through his employer. D3 is a Government of India undertaking. After the lapse of long time from leaving the school the plaintiff has come forward with this suit for a relief of changing his date of birth. Even in his SSLC transfer book there is a declaration to the effect that in future there will not be any change of date of birth. Contrary to the said declaration flouting the same to the winds, the plaintiff has filed this suit, which is liable to be dismissed with costs.

4. The 3rd defendant in his written statement would contend that the suit is not maintainable on facts and law. The court has no jurisdiction to entertain the suit. The plaintiff joined in the D3's corporation on 7.4.1989 and at the time of joining in the corporation his date of birth was registered as 19.3.1963, with the declaration that there will not be any claim in future for change of date of birth. The plaintiff has to prove that his date of birth is 20.8.1964 and not 19.3.1963. The claim of the plaintiff is against the rules and regulations of the D3-Corporation. Hence the suit is liable to be dismissed with costs.

5. On the basis of the above said pleadings the learned trial Court framed 4 issues and 2 additional issues and after scrutinising the evidence available both oral and documentary, the learned trial Judge has come to a conclusion that the plaintiff is not entitled to any relief and consequently dismissed the suit without costs. Aggrieved by the findings of the learned trial Judge, the plaintiff has preferred an appeal in A.S.No.12/1995 before the Subordinate Judge, Udumalpet. The learned first appellate Court has allowed the appeal and decreed the suit as prayed for. Aggrieved by the findings of the learned first appellate Court, the 3rd defendant has preferred this appeal.

6. Now the only point for determination in this appeal is whether the date of birth of the plaintiff is liable to be entered in the service register and other connected records maintained for the plaintiff in D3-Corporation as 20.8.1964 instead of 19.3.1963?

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7.The Point:-

7(a) The learned counsel appearing for the appellant would contend that Ex.B.2 & B.3 are the standing orders for workmen for the Neyveli Lignite Corporation Ltd, and establishment regulations of the said corporation respectively. As per Ex.B.2, standing orders 10(d) says that the age of a workman, as recorded with the Company at the time of employment, shall not thereafter be sought to be altered by the workman

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and that once the date of birth has been entered into the records kept in the company then under no circumstance it shall not be altered by the workman. As per Ex.B.3-Establishment Regulations Rule 9 deals with records of age. According to Rule 9,

(a) the company shall record the age of every employee. The following documents shall be deemed to be satisfactory proof of age at the time the employee enters the Company's service:-

(i) Matriculation or SSLC certificate

(ii) Birth Certificate

(b) (i) In the case of an employee, the year of whose birth is known but not the date and month, the 1st July shall be treated as the date of birth. And when both the year and the month of birth are known but not be exact date, 16th of the month shall be treated as the date of birth.

(ii) Where an employee is unable to produce any evidence of his age he shall state his age and make a written declaration that the age as stated by him is correct. Such employee shall be got examined by the Company's authorised Medical Officer, free of cost, and the opinion of such Medical officer as to the employee's are shall be binding on all concerned.

(c) The age of an employee as recorded with the Company at the time of his employment, shall not thereafter be sought to be altered by the employee.

So under Ex.B.2 standing order 10(d) and as per Ex.B.3 Establishment Regulation Rule 9(c), the date of birth once entered in the records of D3's-corporation in respect of an employee, it shall not be altered by the employee thereafter. As per the Rule 9(a) the proof for date of birth of an employee is matriculation or SSLC certificate and if it is not available then birth certificate. On the date of joining in the matriculation school the date of birth of the plaintiff was given only as 19.3.1963. Ex.A.11 is the Technical High School leave certificate in which the date of birth of the plaintiff has been mentioned as 19.3.1963. There is also a declaration attached to the certificate, which was signed by the father of the plaintiff on 12.3.1979, wherein it has been clearly declared by the father of the plaintiff that the date of birth of the plaintiff is 19.3.1963 and the date, month and year of the date of birth of the plaintiff is correct and in future there will not be any claim for change of the date of birth of the plaintiff on the ground that at the time of joining the plaintiff in the school a wrong date of birth has been given. Contrary to the above said declaration made by the plaintiff's father, the plaintiff has now come to the Court to change his date of birth.

7(b) The learned counsel appearing for the D1/Plaintiff would contend that the said declaration in Ex.A.11 will bind only the plaintiff's father and not the plaintiff. But this sort of contention will not be sustainable because the beneficiary by the change of the date of birth will be only the plaintiff and not his father. When father

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himself was not competent to ask for any change of date of birth in the contrary to the entries in the school records in future, the plaintiff is equally also not competent to ask for change of his date of birth. The date of birth has been entered into in the school records only as per the particulars furnished by the father of the plaintiff. The father of the plaintiff was examined before the trial Court as P.W.2. In the chief examination, P.W.2 would depose that the date of birth of the plaintiff was entered in the school records by the teacher himself, but he would admit that in Ex.A.11-declaration he has signed. He would depose to the effect that there is a horoscope available for the plaintiff, and he has produced the birth certificate of the plaintiff as Ex.P.4 and the birth certificate of elder brother of the plaintiff as Ex.P.1 and the birth certificate of the younger brother of the plaintiff as Ex.P.3. In the cross-examination P.W.2 would admit that at the time of the receipt of transfer certificate for the plaintiff, he has given a declaration to the effect that he will not ask for change of date of birth for the plaintiff in future. Even though P.W.2 would depose in the chief examination that the date of birth in the school records was entered by a teacher out of his own, but there is no pleading in the plaint to the effect that the teacher has entered the date of birth of the plaintiff wrongly in the school records. On the other hand, it is the definite case of the plaintiff that the plaintiff's father has furnished the date of birth to the school and since he is illiterate he has given wrong date of birth of the plaintiff. In Ex.A.1 to A3 the name of the person is left blank. Ex.A.4 is related to a person born on 20.8.1964 to one Ramasamy Gounder and Rathinam and the copy of the same was obtained from the Sub-Registrar's Office on 17.1.1991 itself. But the plaint was filed only on 3.8.1992. If the case of the plaintiff is true, then he would have filed the suit in the year 1991 itself after coming to know through Ex.A.4 that his date of birth is 20.8.1964, for declaration of his date of birth and mandatory injunction.

7(c) P.W.1 is the plaintiff. In the chief examination on 28.6.1994, P.W.1 has stated contrary to the D3's-Corporation's standing orders that the date of birth of one Ramasamy has been changed. To substantiate this contention the plaintiff has not filed any document to show that the date of the birth of one Ramasamy has been changed in D3's office.

7(d) The learned counsel for the appellant relied on JT 2005(6) SC 444 (State of UP and anr. Vs. Shiv Narain Upadhyaya) and contended that an application for correction of the date of birth should not be dealt with by the Courts, tribunal or the High Court keeping in view only the public servant concerned, a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. The facts of the above said case are as follows:-

"An Executive Engineer of the State of Uttar Pradesh has filed an appeal questioning the legality of the judgment

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rendered by a Division Bench of the Allahabad High Court holding that the respondent's date of birth was 1.9.1939 and not 1.9.1930 a claimed by the appellant-State. The respondent/employee was engaged as Class IV employee on 2.1.1972. In the service records the date of birth was indicated to be 1.9.1930. By order dated 31.1.1991 the Executive Engineer-appellant No.2 intimated the respondent-employee that he had superannuated on 30.9.1990 having completed 60 years of age. It was indicated that by mistake he was allowed to work for three months more and paid, and, therefore, direction was given to refund the amount. The said order dated 31.1.1991 was challenged by the respondent in a writ petition. His stand was that according to the school records his date of birth was 1.9.1939 and without any opportunity he had been pre-maturely retired nine years earlier. It appears that the High Court directed production of the service records. By the impugned order dated 11.10.2002 the High Court allowed the writ petition holding that the State had failed to produce the service record in spite of opportunities granted and, therefore, the petitioner's stand that his date of birth was 1.9.1939 was accepted.

The said order of the High Court was challenged before the Honourable Apex Court. While disposing the appeal, the Honoruable Apex Court has held as follows:-

> An application for correction of the date of birth should not be dealt with by the courts, tribual or the High Court keeping in view only the public servant concerned. It need not be pointed out that any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years, below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases or years, within which time many officers who are below him in seniority waiting for their promotion, may loose the promotion for ever. Cases are not unknown when a person accepts appointment keeping in view the date of retirment of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. As such, unless a clear case on the basis of clinching materials which can be held to be conclusive in nature, is made out by the respondent and that too within a reasonable time as provided in the rules governing the service, the court or the tribunal should not issue a direction or make a declaration on the basis of materials which make such claim only plausible. Before any

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such direction is issued or declaration made, the court or the tribunal must be fully satisfied that there has been real injustice to the person concerned and his claim for correction of date of birth has been made in accordance with the procedure prescribed, and within the time fixed by any rule or order. If no rule or order has been framed or made, prescribing the period within which such application has to be filed, then such application must be within at least a reasonable time. . . . . .

The position was succinctly stated by this Court in the above terms in JT 1993 (5) SC 404 (The Secretary and Commissioner Home Department and Ors. Vs. R.Kirubakaran). As observed by this Court in JT 1994(5) SC 337 : 1994(6) SCC 302 (Tamil Nadu Vs. T.V.Venugopalan) and JT 1997(4) SC 660 : 1997 (5) SCC 181 (State of Orissa and Ors. Vs. Ramanath Patnaik) when the entry was made in the service record and when the employee was in service he did not make any attempt to have the service record corrected, any amount of evidence produced subsequently is of no consequence.

These aspects were also reiterated in JT 2003(6) SC 59 : 2003 (6) SCC 483 (State of UP and Ors Vs. Gulaichi (Smt) and 2004(3) SCC 394 (State of Punjab and Ors. Vs. S.C.Chandha).

The High Court has clearly erred in holding that the service book was not produced. As the records reveal along with the affidavit a copy of original service book was filed. The documents have also been annexed in the present appeal. As is clearly evident from the copy of the service book, more particularly the respondent-employee had on 27.4.1977, signed the service book which contained his date of birth as per Christian era. Additionally, the documents referred to above indicated the date of birth to be 1.9.1930. This was also not challenged at any time.

Above being the position the High Court was clearly in error in holding that the date of birth of the respondent-employee was 1.9.1939, contrary to what has been recorded in the service book. We find that the respondent-employee had rendered service till the order dated 31.1.1991 was passed. It would not be equitable to direct refund of salary received by him upto 31.1.1991 beyond the actual date of superannuation i.e. 30.9.1990. However, the period beyond the actual date of superannuation ie. From 30.9.1990 to 31.1.1991 shall not be reckoned towards his retiral benefits."

So far the plaintiff in the case on hand has not moved his employer-D3 for the change of date of birth in his service records. So as rightly held in the above dictum of the Apex Court, the plaintiff is not entitled to ask for the relief regarding the change of date of birth without making any

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application for the same before the employer, through the Court that too after a lapse of three years, which is contrary to Ex.B.2 & B3 rules and regulations of D3-Corporation. The entries in the service book regarding his date of birth has been admitted by the plaintiff is seen from Ex.B.1.

7(e) The learned counsel for the appellant relied on 1997 (2) LLJ 136 (K.R.Sukumaran Nair Vs. State of Kerala and Others). The facts of the above case in brief are as follows:-

> "The petitioner has approached the High Court Kerala challenging Exs.P.4 & P.10 declining his request for correction of his date of birth in service Book as well as school records. The date of birth of the petitioner as entered in the SSLC Book is 13.11.1111(ME). This was carried over to his service book when it was opened on his entry in service. While continuing in service, the petitioner could know that there was mistake in the date of birth in his school records as well as in service records. He submits that the actual date of birth is 14.11.1112 (ME). Seeking correction the petitioner made an application on June 25, 1986 to Government. In that the petitioner applied for the correction of the date of birth in service records. The petitioner produced Ex.P.3 certificate in support of this claim. That is the birth certificate issued to the petitioner. His request was rejected in Ex.P.4. The petitioner was informed in Ex.P.4 that only after correcting the SSLC Book, application for corresponding correction in Service Book can be entertained. Later the petitioner on May 9, 1988 again approached the Government seeking correction of date of birth without corresponding correction in School records. The petitioner pointed out orders granted in favour of other persons without such correction in School records. This was rejected in 1989. In the meantime the petitioner applied to the commissioner for Government Examination under Rule 3 Chapter VI KER for correction of date of birth in the SSLC book; that was on June 27, 1989. But it was not in the statutory form. The petitioner was asked to submit an application in the statutory form. The petitioner submitted it as per Ex.P.5 on June 15,1990. That was rejected on September 10,1990 stating that it could not be entertained due to delay. As per Rule 3(1)(A) Chapter VI KER, the period of limitation was fixed as 15 years at that time. It was in the above circumstances the petitioner's request was rejected on the ground of delay. Thereupon the petitioner submitted an application for condonation of delay before Government. It was rejected by a cryptic order Ex.P.8. Ex.P.8 was challenged before this Court. That was quashed in Ex.P.9 judgment and directed reconsideration. Government reconsidered it and passed Ex.P.10 order, again rejecting it, on the ground of delay. Ex.P.10 is dated May 25, 1991. By that time a note was introduced under Rule3(1)(A) Chapter VIKER providing for condonation of delay. But that will be allowed, as per the said note, only in respect of those who have not crossed the age of

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50 years. Thus when Ex.P.10 was issued though there was provision for condonation of delay the petitioner was not entitled for condonation, because he had crossed the age of 50 years. So I see no reason to interfere with Ex.P.10 order whereby the petitioner's request for condonation of delay is rejected. Before introduction of this note there was no provision for condonation of delay.

It was contended on behalf of the petitioner that even without the correction of date of birth in school records, his date of birth shall be corrected in the service book based on Ex.P.3 certificate of birth.

This contention cannot be accepted in the light of the instructions under Rule 143 in Part III KSR.

Instruction thereunder reads as follows:

1.The entry in the service book regarding the date of birth should indicate on what evidence the date of birth was accepted. The following documents shall be considered as satisfactory proof of date of birth;

2. In the case of the persons who have attended a reconginsed School/College, the School Leaving Certificate or an authenticated extract of admission register of school or college where the employee last studied"

So in the above said case, it has been held that the entries in the school leaving certificate alone is a satisfactory prove for date of birth.

7(f) The learned Subordinate Judge has wrongly came to the conclusion that Ex.B.2 & B.3 regulations are only to the employees of D3-Corporation and Ex.B.2 and B.3 will certainly bind the plaint and as per the relevant provisions of rules and regulations under Ex.B.2 & B.3 an employee under D3 cannot change or alter his date of birth once it was entered in its service records. The plaintiff also examined P.W.3 an astrologer, who would depose that he has prepared two horoscopes under Ex.A12 & A13 and in the cross examination he would depose that he does not remember on which date he prepared those horoscopes. Further it is also not explained why two horoscopes were prepared under Ex.A12 & A13. Under such circumstances, the findings of the trial Court that the plaintiff is not entitled to any relief under the suit alone is sustainable and the judgment and decree of the first appellate Court is liable to be set aside. Point is answered accordingly.

8. In the result, the Second Appeal is allowed with costs through out and the decree and judgment of the first appellate Court in A.S.No.12 of 1995 on the file of the Subordinate Judge, Udumalpet, is set aside and

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consequently the decree and judgment passed in O.S.No.482/1992 on the file of the District Munsif Court, Pollachi is restored and the suit is dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

ssv

To,
1. The Subordinate Judge, Udumalpet.
2. The District Munsif, Pollachi.
3. The Record Keeper, VR Section, High Court, Madras.
+ 1 CC To Mr. N.A.K.Sarma, Advocate SR NO. 5470
+ 1 CC To Mr. R.N.Amarnath, Advocate SR NO.5215

S.A.No.351 of 1997

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